

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

**ITC MIDWEST LLC,**

**Petitioner,**

**vs.**

**IOWA UTILITIES BOARD,**

**Respondent.**

**CASE NO. CVCV063439**

**RESPONDENT'S PREANSWER  
MOTION FOR REMAND OR  
DISMISSAL**

**COMES NOW** Respondent Iowa Utilities Board, by and through its undersigned counsel, and pursuant to Rule 1.303, Iowa R. Civ. P., moves for remand or, in the alternative, dismissal of the above-entitled action and, in support thereof, respectfully states as follows:

1. This matter arises from Iowa Utilities Board (Board) Docket No. E-21340 in which ITC Midwest LLC (ITC Midwest) is seeking an extension of an electric transmission line franchise. That docket remains pending.

2. The action for which judicial review is sought is an "Order Requiring Amendment to Electric Franchise" issued March 11, 2022, which is an intermediate order relating to procedural steps to be required of ITC Midwest prior to the issuance of an extension of the franchise.

3. The requirements of the March 11, 2022 order are collateral to the ultimate issue to be decided in Docket No. E-21340, which is the granting of the extension of the franchise.

4. On May 4, 2022, the Board issued an order entitled "Order Addressing Extension of Electric Transmission Line Franchise, Motion for Stay, and Amendment Requirements," which indicated an intent to proceed with a determination on the Petition for Extension of Franchise without addressing the collateral issues arising from the "Order Requiring Amendment to Electric Franchise."

5. On May 24, 2022, ITC Midwest filed a Motion for Reconsideration of the Board's

May 4, 2022 Order. This filing asserts, based upon the holding in *Christiansen v. Iowa Bd. Of Educ. Examiners*, 831 N.W.2d 179, 190 (Iowa 2013), that the filing of the Petition for Judicial Review in this case relieved the Board of jurisdiction to decide the ultimate issue pending in Docket No. E-21340, the issuance of a franchise extension.

6. As the Motion for Reconsideration is pending before the Board, the Board takes no position in this pleading in regard to the validity of the arguments asserted therein.

### **MOTION FOR REMAND**

7. The remand of this matter for further determinations by the Board is authorized by Iowa Code § 17A.19(10).

8. Remand would allow for the determination of all issues pending in Board Docket No. E-21340 and allow any judicial review thereof to provide a complete and final record of the proceedings and of all issues remaining for review in such proceeding.

9. Remand would resolve the issue raised by ITC Midwest in regard to the continuing jurisdiction of the Board in the underlying agency docket and allow ITC Midwest to achieve the ultimate end sought in that docket, the issuance of a franchise extension.

10. Remand would provide an opportunity for the Board and ITC Midwest to resolve the issues raised in the Petition for Judicial Review at the Board level through multiple possible agency proceedings. The issues are addressable through the pending docket, a potential rulemaking docket, or petition for declaratory order.

11. In the event that issues remain after final agency action in Board Docket No. E-21340, those issues would be subject to judicial review pursuant to Iowa Code § 17A.19 and no prejudice would result to ITC Midwest by the completion of the underlying docket prior to such review.

### MOTION TO DISMISS

12. The “Order Requiring Amendment to Electric Franchise” issued March 11, 2022, in Board Docket No. E-21340 is an intermediate order in that proceeding in that the order does not resolve the final issues to be determined in that docket, which is whether an extension of electric transmission line franchise will be issued by the Board.

13. Pursuant to Iowa Code § 17A.19(1), a preliminary, procedural, or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide adequate remedy.

14. The party seeking judicial review of an intermediate agency action must show compliance with Iowa Code § 17A.19(1) in regard to both that adequate administrative remedies have been exhausted and that review of the final agency action would not provide an adequate remedy. *Richards v. Iowa State Commerce Commission*, 270 N.W.2d 616, 619-20 (Iowa 1978). These two conditions are not easily satisfied. *Salsbury Labs v. Iowa Dep’t of Environmental Quality*, 276 N.W.2d 830, 837 (Iowa 1979). The party seeking judicial review of intermediate agency action bears the burden of establishing these two conditions. *Richards*, 270 N.W.2d at 619-20. If the two conditions are not established, the judicial review is premature, and more importantly, a petition for judicial review that is not filed in accordance with the requirements of § 17A.19 deprives the district court of jurisdiction over the matter. *Salsbury Labs v. Iowa Dep’t of Environmental Quality*, 276 N.W.2d at 837-38; *Cooper v. Kirkwood Community College*, 782 N.W.2d 760, 165 (Iowa Ct. App. 2010).

15. ITC Midwest has failed to address the second half of the standard, whether a review of the final agency action would provide an adequate remedy. The issue of interlocutory appeal is addressed only briefly in a footnote to the Petition for Judicial Review and the footnote merely

hypothesizes that a reviewing court could find the Order Requiring Amendment to be final agency action.

16. All issues raised in this judicial review can be raised in a review of the final order in the underlying agency docket, and such review would provide an adequate remedy for ITC Midwest.

17. As the Supreme Court stated in its decision in *Richards v. Iowa State Commerce Commission*, where a review of the final agency action would include the same requirements for standing, the same available relief, and the same standard of review, review of intermediate agency actions is not appropriate and a Petition for Judicial Review thereof should be dismissed. *Richards*, 270 N.W.2d at 623.

### **RELIEF REQUESTED**

**WHEREFORE**, Respondent Iowa Utilities Board respectfully requests this Court grant the Motion for Remand to allow further proceedings before the Board. In the event the Court denies the Motion for Remand, Respondent requests that the Court grant the Motion to Dismiss and issue such further orders as the Court deems appropriate.

Respectfully submitted,

/s/ Jon Tack  
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**ATTORNEY FOR RESPONDENT IOWA  
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**ALL PARTIES SERVED ELECTRONICALLY**